
**IN THE UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH**

NATASHA CHILD, : **Civil No. 1:08-cv-147**

Plaintiff, : **MEMORANDUM DECISION &**

vs. : **ORDER**

KENNETH HAMMOND, an Ogden City : **JUDGE TENA CAMPBELL**

Police Officer, JON GREINER, Ogden

City Chief of Police, OGDEN CITY, and

JOHN and JANE DOES 1-15, : **MAGISTRATE JUDGE BROOKE C.**

WELLS

Defendants.

This motion originally came before the Court on Defendant Ogden City and Defendant Jon Greiner's Motion To Compel¹ answers to Interrogatories fourteen (14) and twenty-one (21). It appears, however, through the course of briefing, that the substance of the motion to compel has become moot. What currently remains for consideration is Defendants' request for attorney fees incurred in pursuing their Motion To Compel. For the reasons stated herein, the Court denies Defendants' request for costs and fees.

¹ Docket No. 27.

Defendants seek attorney fees pursuant to Federal Rules of Civil Procedure 37, arguing an award is appropriate given Plaintiff's unjustifiable refusal to provide the requested information.² Plaintiff counters that Defendants' interrogatory requests were not properly raised or clarified with counsel.³ Despite their arguments, both sides seem to agree that on June 25, 2009, Plaintiff's attorney requested additional time of a "few days" within which to provide an amended response; to which defense counsel agreed.⁴ The parties further agree that after not having received a response within a week, defense counsel filed their currently pending motion to compel.⁵

Pursuant to Federal Rule of Civil Procedure 37, if a party fails to answer an interrogatory "the discovering party may move for an order compelling an answer".⁶ Furthermore, if the motion to compel is granted, the court must require the party "whose conduct necessitated the motion" to pay movant's "reasonable expenses" incurred.⁷ Here, defendants' motion to compel is moot. Additionally, the Court disagrees with Defendant's characterization of Plaintiff's actions as "unjustifiable refusal" given that after counsel's request for additional time, Defendants filed their motion to compel so shortly thereafter.

Defendants' request for attorney fees and costs is denied.

²Defendants' Memorandum In Support, pg. 4.

³Plaintiff's Memorandum In Opposition, pg 6.

⁴Defendant's Memorandum In Support, Fact No. 9, 10, Page 2, 3.

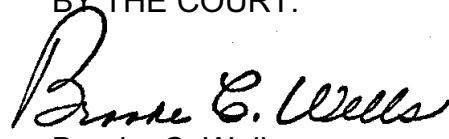
⁵Id. Fact No. 11.

⁶F.R.C.P. 37(a)(2)(B).

⁷F.R.C.P. 37(a)(5)(A).

DATED this 7th day of August, 2009.

BY THE COURT:



Brooke C. Wells
United States Magistrate Judge